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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 THOMAS ZILL HANLEY,
12 Plaintiff,
13 v.
14 STATE OF CALIFORNIA, et al.,
15 Defendants.
No. 2:20-CV-0995-TLN-DMC-P
FINDINGS AND RECOMMENDATION

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FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the court is plaintiff's complaint. See ECF No. 1.

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the court to conduct the screening required by law when the allegations are vague
5 and conclusory.

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7 I. PLAINTIFF'S ALLEGATIONS

8 The plaintiff, Thomas Zill Hanley, is an inmate incarcerated at California Health
9 Care Facility. Plaintiff names the following defendants: (1) the State of California, (2) the County
10 of San Francisco, and (3) Child Protective Services (CPS). Plaintiff claims defendants violated his
11 Eighth Amendment right to be free of cruel and unusual punishment by housing him with an
12 abusive guardian when he was a child.

13 Plaintiff suffers from fetal alcohol syndrome and complex post-traumatic stress
14 disorder. Plaintiff's therapists and case workers repeatedly reported plaintiff's foster mother to
15 defendant CPS due to her abusive behavior towards plaintiff and refusal to provide plaintiff with
16 access to psychotherapy or prescription medication. CPS did not take any action in response to
17 the reports. Defendants State of California, CPS, and County of San Francisco terminated
18 plaintiff's access to his therapeutic support system when he turned eighteen years old despite
19 clear evidence that plaintiff still needed the services. Plaintiff claims that defendants' inaction and
20 revocation of resources led him to murder his legal guardian and receive a lengthy jail sentence.

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22 II. DISCUSSION

23 Plaintiff's suit cannot pass screening. First, the Eleventh Amendment bars plaintiff
24 from filing a lawsuit against the State of California or California's Child Protective Services.
25 Second, plaintiff cannot sue the County of San Francisco for the individual actions of its social
26 workers because municipalities are not liable for respondeat superior liability in § 1983 actions.
27 Third, plaintiff's Eighth Amendment claim cannot stand because the Heck doctrine bars § 1983
28 actions that challenge the nature or duration of an inmate's confinement.

1 **A. Claims Against State of California and Child Protective Services**

2 The Eleventh Amendment prohibits federal courts from hearing suits brought
3 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
4 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
5 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep’t
6 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
7 Cir. 1989).

8 Plaintiff’s allegations against the State of California cannot stand because the
9 Eleventh Amendment bars plaintiff from suing states. The Eleventh Amendment also bars
10 plaintiff’s claims against California’s Child Protective Services. Child Protective Services is a
11 branch of the California Department of Social Services. The Department of Social Services
12 operates as an agency of the state and thus has the same Eleventh Amendment protections as the
13 state. See Caldwell v. LeFaver, 928 F.2d 331, 332 (9th Cir. 1991); see also Fed. R. Evid. 201
14 (allowing court to take judicial notice of matters of both state court records and its own record).

15 **B. Claim Against the County of San Francisco for the Individual Actions**
16 **of Its Social Workers**

17 Municipalities and other local government units are among those “persons” to
18 whom § 1983 liability applies. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978).
19 Counties and municipal government officials are also “persons” for purposes of § 1983. See id. at
20 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local
21 government unit, however, may not be held responsible for the acts of its employees or officials
22 under a respondeat superior theory of liability. See Bd. of County Comm’rs v. Brown, 520 U.S.
23 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not of
24 the actions of its employees or officers. See id. To assert municipal liability, therefore, the
25 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or
26 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to
27 withstand dismissal even if it is based on nothing more than bare allegations that an individual
28 defendant’s conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los

1 Angeles Police Dep’t, 839 F.2d 621, 624 (9th Cir. 1988).

2 Plaintiff’s claim against the County of San Francisco contains allegations based on
3 the individual actions of the social workers assigned to his case.¹ Plaintiff’s claims that are based
4 on the individual actions of social workers are not cognizable because a municipality is not liable
5 for the conduct of its employees. Plaintiff can only pursue a § 1983 action against the County of
6 San Francisco for municipal policies or customs that denied plaintiff his constitutional rights. No
7 such allegations are stated by plaintiff.

8 **C. Eighth Amendment Claim to Be Free of Cruel and Unusual**
9 **Punishment**

10 When a state prisoner challenges the legality of his custody and the relief he seeks
11 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
12 cognizable under 42 U.S.C. § 1983 and the prisoner’s sole federal remedy is a petition for a writ
13 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
14 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
15 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
16 alleges constitutional violations which would necessarily imply the invalidity of the prisoner’s
17 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
18 imposition of a sanction affecting the overall length of confinement, such a claim is not
19 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by
20 habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-
21 84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to
22 malicious prosecution action which includes as an element a finding that the criminal proceeding
23 was concluded in plaintiff’s favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)
24 (concluding that § 1983 claim not cognizable because allegations of procedural defects were an
25 attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding
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27 ¹ Plaintiff also alleges that the County of San Francisco violated his constitutional
28 rights through an official policy. The Heck doctrine bars this claim, as discussed in the following
section.

1 that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and
2 not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005)
3 (concluding that § 1983 action seeking changes in procedures for determining when an inmate is
4 eligible for parole consideration not barred because changed procedures would hasten future
5 parole consideration and not affect any earlier parole determination under the prior procedures).

6 The Court acknowledges that plaintiff attempts to bring an Eighth Amendment
7 cruel and unusual punishment claim. However, § 1983 is not the appropriate vehicle of relief.
8 Plaintiff alleges that defendants' inaction led him to commit a crime and receive a lengthy prison
9 sentence. This claim necessarily challenges the nature and duration of plaintiff's confinement by
10 suggesting that plaintiff was not entirely responsible for the crime he committed. As a result, a
11 petition for writ of habeas corpus is the only federal relief available to plaintiff and plaintiff
12 cannot successfully establish a § 1983 claim based on the alleged events.

13 Moreover, to the extent plaintiff alleges defendant County of San Francisco is
14 liable based on customs or policies of the county, plaintiff cannot state a claim because those
15 customs or policies could not have been the moving force behind the alleged Eighth Amendment
16 violation. Here, plaintiff alleges he is suffering cruel and unusual punishment in the form of
17 confinement as a result of committing a crime which, in turn, plaintiff asserts he would not have
18 committed but for the county's customs or policies. As discussed above, these allegations, at
19 best, suggest some mitigation for his crime, which would be an issue in challenging the fact or
20 duration of plaintiff's confinement, not the conditions of that confinement. Plaintiff's custom and
21 policy allegations against the county do not relate to the conditions of his current confinement,
22 which would be necessary for plaintiff to be able to establish the required link between the
23 allegedly deficient customs and/or policies and a violation of plaintiff's Eighth Amendment
24 rights.

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III. CONCLUSION

Because it does not appear possible that the deficiencies identified herein can be cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

Based on the foregoing, the undersigned recommends that plaintiff's claims against all defendants be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: June 25, 2020

DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE